

SERVICE DATE - LATE RELEASE JANUARY 9, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 203X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN HARRIS COUNTY, TX

Decided: January 9, 2004

By petition filed on September 23, 2003, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon the remaining portion of the Columbia Tap Industrial Lead, extending from milepost 0.64 near Walker and Palmer Streets to milepost 1.54 near Trulley and Velasco Streets in Houston, Harris County, TX, a distance of .90 miles. Notice of the petition was served and published in the Federal Register (68 FR 58748) on October 10, 2003, instituting an exemption proceeding. The exemption will be granted, subject to environmental and standard employee protective conditions.

BACKGROUND

UP states that the line connects at milepost 0.64 with the HB&T Walker Street Line, which The Burlington Northern and Santa Fe Railway Company (BNSF) operates. The line is stub-ended and cannot be used for overhead traffic.

UP asserts that there will be no adverse effect on the sole shipper currently using the line, Porter Warner Industries (Porter Warner). According to petitioner, Porter Warner shipped only two cars of bentonite clay in each of the years 2001 and 2002, and UP states that this material, which moves in large sacks in boxcars, could be handled at an alternate site for transloading. Furthermore, UP adds, Porter Warner is located within easy reach of alternate sources of transportation services as it is located within 3 miles of rail lines of UP and BNSF and major highways Interstate 45 and U.S. 59.

UP states that the maintenance costs of the line far outweigh the revenue generated on the line by its service to Porter Warner. UP estimates that the annual cost just to maintain the line's three at-grade crossings, which it must cross to serve Porter Warner, is \$6,471. UP states that the two carloads of bentonite clay that moved over the line in 2002 originated at Mason City, IA, and generated gross revenues for UP of only \$4,263. In addition, UP estimates that the off-branch line costs for these same two carloads would be an additional \$2,697. UP maintains that, given

the location of the line and the development trends in central Houston, it is unlikely that another shipper would locate on the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without the Board's prior approval. Under 49 U.S.C. 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP of the expense of maintaining and operating a line that is little used and by allowing UP to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. There is no overhead traffic. Only one shipper exists on the line, and this shipper makes only minimal use of the line, has not opposed the abandonment, and has reasonable transportation alternatives. Nevertheless, to ensure that Porter Warner is informed of the Board's action, UP will be required to serve a copy of this decision on this shipper within 5 days of the service date and certify to the Board that it has done so. Given the market power finding, the Board need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979) will be imposed.

UP has submitted environmental and historic reports with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on November 21, 2003, and requested comments by December 22, 2003.

In the EA, SEA indicated that the National Geodetic Survey (NGS) has submitted comments stating that two geodetic station markers may be affected by the proposed

abandonment and requesting 90 days' notification in advance of any activities that may disturb or destroy these markers. Accordingly, SEA recommends that a condition be placed on any Board decision granting abandonment authority that would require that UP consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.

The East Downtown Management District, City of Houston (EDMD) submitted comments stating that it is concerned about post-abandonment maintenance of the right-of-way (ROW). Although the Board does not have jurisdiction over maintenance of the ROW following consummation of an abandonment, SEA contacted UP and verified that UP is aware of EDMD's comments.

The Texas Historical Commission (SHPO) submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places would be affected by the proposed abandonment. SEA has reviewed the report and the information provided by the SHPO and concurs with the SHPO's comments.

UP states that it has been contacted by the City of Houston's Bicycle Pedestrian Coordinator requesting to purchase the ROW for a proposed bicycle and hiking trail. UP plans to work with the City to sell it the ROW.

No comments to the EA were filed by the due date. Accordingly, the condition recommended by SEA in the EA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated that the right-of-way may be suitable for other public uses following abandonment. However, no one has sought a public use condition, and no such condition will be imposed.¹

It is ordered:

1. Under 49 U.S.C. 10502, an exemption from the prior approval requirements of 49 U.S.C. 10903 for the abandonment by UP of the above-described line is granted, subject to the employee protective conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979), and subject to the condition that UP consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers.

¹ Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by October 30, 2003.

2. UP is directed to serve a copy of this decision on Porter Warner within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by January 16, 2004, subject to time extensions authorized under 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 102.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective February 8, 2004. Petitions to stay must be filed by January 26, 2004, and petitions to reopen must be filed by February 3, 2004.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by January 9, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary